

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

PROJECT COMPLAINT MECHANISM

ELIGIBILITY ASSESSMENT REPORT

COMPLAINT: TBILISI RAILWAY BYPASS 3

REQUEST NUMBER: 2011/03

EXECUTIVE SUMMARY

On 8 March 2011 the PCM Officer received a complaint (“Complaint”) from Mr Aleksandre Asatiani regarding Tbilisi Railway Bypass Project (“Project”). The Complaint (Annex 1 to this Report) is submitted through an Authorised Representative, Mr David Chipashvili, a representative of Georgian NGO Association Green Alternative. The Complainant is a resident of the Avchala settlement, one of the areas on the proposed bypass route. The Complaint referred to previous correspondences with the Bank (on 17 January 2011 and on 4 February 2011) and with the Project Client, Georgian Railway. The Complaint was registered, according to the PCM RP 10 and PCM Expert Dr Walter Leal was appointed to act as Eligibility Assessor, together with the PCM Officer, on 21 March, 2011.

The Complainant requests both a Problem-solving Initiative and a Compliance Review. The Compliance Review request relates to economic displacement, and alleges a breach of Performance Requirement 5 of the EBRD Environmental and Social Policy 2008, paras. 31 and 32. As these Compliance Review aspects correspond closely with, though do not overlap precisely with, the aspects of the Compliance Review requested under the Tbilisi Railway Bypass 1 Complaint, it makes sense in terms of procedural efficiency and consistency of outcomes for the PCM to address all these Compliance Review issues by means of a single Compliance Review process. The aim of the present Eligibility Assessment Report is to determine eligibility of the Complaint for the Problem-solving Initiative only.

Based on the evaluation of the eligibility criteria set out in the PCM RP 18, 20, 21 22 and 24 and based on the analysis of the information and documents available to the PCM team, the Eligibility Assessors determined the Complaint as **eligible for a Problem-solving Initiative** and recommend a structured, participatory Problem-solving Initiative (PSI) facilitated by the PCM Expert Susan Wildau and the PCM Officer.

Considering that the Complainant is the resident of the same Avchala community where the other two complaints on Tbilisi Railway Bypass Project originated (Tbilisi Railway Bypass 2 Complaint and Tbilisi Railway Bypass 4 Complaint), that issues raised in all three complaints are related and interlinked and that the stakeholders in all three cases are the same, the PCM team recommends a single Problem-solving Initiative process which will prevent duplications, and allow the problem-solving process to be performed more efficiently.

The PCM team believes that a Problem-solving Initiative, facilitated by the PCM, will improve communication among the parties and help them understand each other and support a joint search for solutions. The PCM Officer and Expert will convene and facilitate the Problem-solving Initiative and work out a course of action in consultation with the parties. The PCM also recommends that relevant specialists from the Bank’s ESD team participate as a technical resource and advisor if the parties agree. The PCM proposes to start preparation work for the PSI in August 2011, followed by a visit to Tbilisi in early September – October 2011 for the actual problem-solving process.

I. BACKGROUND INFORMATION

A. The Project

1. EBRD is providing a senior loan of up to €100m to develop a new railway route bypassing the central area of the city of Tbilisi, the Tbilisi Railway Bypass Project. The loan was approved by the EBRD Board of Directors for financing on 9 March 2010. The Project Client is Georgian Railway LLC - Georgian state-owned company. The project management is supervised by the Ministry of Economic Development of Georgia. The estimated total cost of the Project is up to EUR 300 million. Georgian Railway will complement EBRD's loan with the proceeds from Euro Bonds issued by Georgian Railway and their own funds. The Project is a key priority that enjoys strong support from the Government of Georgia and the Tbilisi municipality.

2. The Tbilisi Railway Bypass, a Category A project, intends to (i) relocate a section of Georgia's main east-west railway line in order to allow hazardous freight, mainly oil and oil products from Azerbaijan and Central Asia, to bypass the densely populated city-centre of Tbilisi; (ii) facilitate renewal of the central railway station area and reintegration of the city-urban land in accordance with the new General Plan for Perspective Development of the city, making it available for redevelopment (e.g., new offices, dwellings and commercial activities); and (iii) improve the safety and efficiency of rail operations within the city of Tbilisi, enabling relocation of the existing rail facilities presently located in the centre of the urban area.

3. The project calls for the construction of a 28km long double track electrified new railway that bypasses the city, as well as upgrades to the current track, among other measures. As a result of the project, the freight shipped by rail which comprises a significant amount of crude oil and oil products, in transit from Azerbaijan, Kazakhstan and Turkmenistan to the Black Sea ports, will no longer be routed through the city's centre.

4. The Project will be implemented in two phases. Phase 1 involves the construction and putting into operation of the railway by-pass. Phase 2 will focus on dismantling and cleaning up the area to be freed-up inside the Tbilisi city centre.

B. The Complaint

5. On 8 March 2011 the PCM received a complaint ("Complaint") from Mr Aleksandre Asatiani (see Annex 1), a resident of the Avchala settlement, one of the areas on the proposed bypass route. The Complaint is submitted through an authorised representative, Mr. David Chipashvili, International Financial Institutions Monitoring Programmes Coordinator with Association Green Alternative, Georgia. The Complaint was registered according to PCM PR 10 and notification of registration was sent to the Authorised Representative of the Complainant and the Relevant Parties pursuant to PCM RP 12, and the Complaint was posted on the PCM website and noted on the web-based PCM Register according to PCM RP 13. On 24 March Dr Walter Leal was appointed to assist the PCM Officer in the assessment of the eligibility of the Complaint.

6. The Complainant claims that the GR took 123 sq meters of his land plot in Avchala for the construction of the Project and refuses to compensate him because his property rights on the land are not formally registered. The 123 sq meters is part of a 930 sq meters land plot that Mr Asatiani and his family used since 1988. With this Complaint, Mr. Asatiani expects the PCM to assist him in receiving compensation for the whole property that he used since 1988 (all 930 sq. meters) and believes it will not be possible for the family to continue living on that land, in such close proximity to the Project.

7. The Complainant requests both PSI and Compliance Review. The Compliance Review request relates to economic displacement, and alleges a breach of Performance Requirement 5 of the EBRD Environmental and Social Policy 2008, paras. 31 and 32. As these Compliance Review aspects correspond closely with, though do not overlap precisely with, the aspects of the Compliance Review requested under the Tbilisi Railway Bypass 1 Complaint, it makes sense in terms of procedural efficiency and consistency of outcomes for the PCM to address all these Compliance Review issues by means of a single Compliance Review process. The aim of the present Eligibility Assessment Report is to determine the eligibility of the Complaint for the Problem-solving Initiative only.

II. ELIGIBILITY ASSESSMENT FOR A PROBLEM-SOLVING INITIATIVE

A. Objectives and Methodology

8. The objectives of the Eligibility Assessment were to: (i) determine whether the Complaint meets the eligibility criteria set out in PCM RP 18, 20, 21, 22 and 24 of the; (ii) explore the history of the complaint; (iii) clarify the issues and concerns raised by the Complainant; (iv) identify the principal stakeholders that need to be consulted on the issues raised in the Complaint and gather information on their perspectives and view of the situation; (v) explore the stakeholders' willingness and readiness to engage in a joint Problem-solving Initiative; and (vi) recommend whether the Complaint is appropriate for problem solving.

9. The Eligibility Assessment included:

- (i) A review of the correspondences exchanged between the Complainant, the Bank and Georgian Railway;
- (ii) A review of project documents, including the ESIA, RAP, Project progress reports, RAP framework, Stakeholder Engagement Plan, Resettlement Implementation Manual, Georgian Law on Expropriations, etc.;
- (iii) Interviews with EBRD staff and management involved in the Project; and Project Consultant;
- (iv) A field-based assessment from May 9 – May 13, 2011, consisting of site visits to Tbilisi and Avchala; meeting with the wife of the Complainant and his Authorised Representative¹. An interpreter supported the PCM team during these meetings. Interviews with the Project Sponsor and its consultants, including the Head of the PIU, GR Deputy Head of Procurement and Construction, GAMMA LLC, APRL, and Sponsor's in-house consultants for environment and resettlement, respectively.
- (v) Engagement of a Georgian lawyer as a resource to the PCM team to provide a legal opinion on issues related to the complaint.

10. During the Eligibility Assessment the PCM team, established that in order to make a decision on the eligibility of the Complaint for a Problem-solving Initiative they needed a legal opinion from a Georgian lawyer with knowledge of the national legislation covering ownership of land and property, as well as applicable international standards. The PCM Officer consequently engaged ERISTAVI Law Group, a Georgian legal firm, who conducted additional fact-finding and provided the PCM with a legal opinion on the case. In determining the eligibility of the Complaint the PCM team also considered the information and legal advice provided by ERISTAVI.

¹ Mr Asatiani was in poor health during our visit (he is disabled) and we were not able to meet him. As we understood from his wife, she often represents the family as Mr Asatiani is mostly bedridden.

11. The Eligibility Assessment Report seeks to present the issues as the different parties explained them to the PCM team and is intended to assist the stakeholders in better understanding each other's needs, interests and concerns, and to help them consider options to address those concerns. It does not gather information in order to make findings of fact, judge the merits of the complaint, determine whether or not the project is in compliance with relevant policies and practices, provide judgments on any issues related to the Project, or make a set of expert recommendations on how issues should be solved.

12. The PCM's role when a Problem-solving Initiative is recommended and approved is to facilitate solutions to the issues as described by the different stakeholders, and to initiate and guide the problem-solving process. The PCM offers help to the parties involved in the Project to resolve their issues through a variety of processes including preparing the parties for problem-solving discussions; convening the parties; designing and facilitating mutual information exchange sessions; organising joint fact-finding processes; facilitating consensus building, and providing other processes conducive for all parties to arrive at solutions. It is the PCM's responsibility to treat all parties with respect and to assure a fair process. It is not the PCM's role to decide whether parties' actions, opinions or perceptions are right or wrong or to arbitrate in favour of one of the parties.

B. Positions of the relevant parties

13. The **Complainant** claims that the Georgian Railway took 123 sq meters of his land plot in Avchala for the construction of the Project and refuses to compensate him because his property rights on the land are not formally registered. The 123 sq meters is part of a 930 sq meters land plot that Mr Asatiani and his family used since 1988. On December 12, 1988 Mr. Asatiani received land plot N32 (area of 600 sq meters) in Avchala district, as a member of the Gardeners' Union of the Kavkaselektroqselmsheni factory. Later, on August 6, 1997 an additional 330 sq meters of land were granted to the Complainant under the Act of Receipt and Delivery on the land plot N 5184. According to the Complainant, he was informed that in order to receive compensation for the land used for the construction of the Project, he had to formally register his ownership over the land. According to the Complainant, he made several attempts to obtain a title of ownership, but was rejected registration with various explanations.

14. The Complaint also notes general difficulties in communicating with the Client and claims that only after raising the matter with the EBRD (on 17 January 2011 and 4 February 2011) and the Bank's intervention was it possible to meet a representative of Georgian Railway. According to the Complaint, when the wife of the Complainant eventually met with the representative of Georgian Railway, she was informed that the land plot in Avchala that the railway needed (123 sq. meters of their property) was a property of Tbilisi City Hall and had already been granted to Georgian Railway for the construction of the Project². The Complainant did not find the responses received from the Bank or the Client sufficient in addressing his concerns and consequently submitted a complaint to the PCM.

15. With this Complaint, Mr. Asatiani expects the PCM to assist him in receiving compensation for the whole property that he used since 1988 (all 930 sq. meters). He believes it will not be possible for the family to continue living on the remaining land because of the close proximity to the Project.

² During the Eligibility Assessment the PCM team established that not 123 but 330 sq. meters of the land plot that the Complainant uses since 1988 were transferred to the Ministry of Economy and Sustainable Development of Georgia (not the Tbilisi City Hall as the Complaint claims) and then to the Georgian Railway. The Complainant's wife and his Authorised Representative seemed to be unaware of this

16. As mentioned above, the Complaint also requests a Compliance Review on the alleged breach of Performance Requirement 5 of the EBRD Environmental and Social Policy 2008, paras. 31 and 32. Considering that these Compliance Review aspects correspond closely with the aspects of the Compliance Review requested under the Tbilisi Railway Bypass 1 Complaint, the PCM will address all these Compliance Review issues through a single Compliance Review process, to ensure procedural efficiency and consistency of outcomes for the PCM.

17. **Georgian Railway, the Project Client**, is the national rail company of Georgia, and a vital artery of the Euro-Asian Transportation corridor that links Europe with Central Asia. Founded in 1865, Georgian Railway boasts a rich and vibrant history and significant engineering ingenuity to overcome the geographical challenges posed by establishing a railway line in the complicated geographical profile of Georgia. Georgian Railway inaugurated its first passenger service on October 10, 1872, from Poti to Tbilisi central station. Today Georgian Railway provides extensive freight and passenger services across more than 2,344.2 km of track.

18. A number of entities are involved in making decisions and/or providing input and expertise on the issues related to the complaint. The overall project management is the responsibility of Georgian Railway's Project Implementation Unit (PIU). A set of consultants, lawyers, engineers, and social and environmental experts support the PIU in the implementation of the Project. GAMMA LLC is providing technical assistance and advice on environmental matters, including assisting Georgian Railway with the development of detailed engineering measures to ensure adequate provisions are in place to mitigate impacts. GEOGRAPHIC LLC developed the Resettlement Action Plan. The Association for Protection of Landowners Rights (APLR), an NGO active since 1996, specialises in resettlement and land acquisition issues and has been involved in implementing the RAP- e.g., conducting negotiations with land owners and assisting with the land registration process under the direction of Georgian Railway. In addition, GEOGRAPHIC LLC and APLR drafted the ESIA along with a third firm. The Levan Samkharauli Forensic Expertise Bureau conducted the independent land evaluations. Georgian Railway has also engaged several in-house consultants – one attached to the legal department and a specialist in resettlement; the other with knowledge of environmental issues. Other key players include the Deputy Head of Procurement and Construction for Georgian Railway, the Construction Contractor and the Supervising Engineer.

19. The Project is one of the biggest and most complex projects ever undertaken by Georgian Railway. The state-owned enterprise has invested lots of hard and intensive work leading to the construction and final design stage of the project. They are interested in “getting it right” in the way they manage social and environmental issues, as well as in how they conduct overall operations and ensure a high level of performance. The Georgian Railway is interested in building and maintaining good relations with local communities, government agencies and the EBRD. It wants to be available and accessible to meet with property owners at their request to discuss project related issues.

20. The primary interests and concerns expressed by Georgian Railway representatives regarding the Project in general include the following:

- Avoid reputational risk.
- Minimise project delays and keep to the time frame.
- Avoid creating unrealistic expectations of project affected people that could create conflict later on.
- Comply with the EBRD standards and policies, the RAP, Environmental and Social Action Plan and Georgia Law.

- Be a responsive and reliable partner with the EBRD.
- Operate a safe and successful project.
- Provide reliable, efficient, environmentally sound and predictable rail transport for passengers and freight for the region.
- Strengthen Georgia's railway transportation network.
- Keep the public informed and disseminate accurate information about the project.
- Avoid problems, misunderstandings and miscommunications.
- Manage project risk effectively.
- Meet local residents' needs as much as possible according to the EBRD policies and Georgian law.

21. The position of the Georgian Railway on the Complaint, expressed in their response (Annex 3 to this Report) and during the meeting with the PCM team can be summarised as follows:

- a) Georgian Railway provides assistance to land owners in registering their property rights with the National Agency of Public Registry (NAPR) as required by the EBRD's Environmental and Social Policy. As of today Georgian Railway assisted 35 land owners and paid 7,873 Georgian Lari to the Tbilisi Municipality in registration fees.³
- b) Georgian Railway stresses that it had no involvement in the NAPR's refusal to register Mr Asatiani's property.
- c) Georgian Railway obtained information on the status of the registration of the Complainant's property from the NAPR's website. According to that information the Complainant applied to the NAPR to register his property in April 2008, but in September 2009 the registration procedures were terminated and the Complainant was informed about a launch of a criminal case regarding the forgery of the documents evidencing property rights on the property.⁴ After that the Complainant made another three applications (in September 2009, December 2009 and November 2010) to the NAPR for the registration of the property, but was refused all three times with the same explanation and reference to the criminal case.
- d) Consequently, part of the land under the possession of the Complainant (123 sq meters⁵) needed for the construction of the Project was registered as State property and was granted to Georgian Railway.

22. During the meeting with the PCM team in Tbilisi, Georgian Railway signalled some flexibility and willingness to review the situation to assess whether bases exist for any adjustments and to find an appropriate solution to the problem. In order to make an accommodation or adjustment Georgian Railway will need bases in the EBRD Policy and/or in the Georgian legislation. At the least, it needs to ensure that any such adjustments will not breach Georgian legislation.

23. **The EBRD** is monitoring the implementation of the Project by Georgian Railway according to EBRD policies and loan conditions. Regulatory requirements established by the Georgian regulating agencies and a number of more comprehensive and detailed mitigation measures to address specific impacts (e.g., noise, water protection, community safety and

³ This assistance is available only to the land-owners who will be paid compensation for displacement – formal registration of property rights provides legal bases for the payment of compensation.

⁴ The Client's response does not clarify that the criminal case was launched regarding only 330 sq meters of the land. The Complainant's ownership of the remaining 600 sq meters, although not formally registered, is not disputed.

⁵ As a result of additional fact-finding by ERISTAVI Legal Group, the PCM team established that not 123 sq meters, but 330 sq meters of the land were transferred to the State (Ministry of Economy and Sustainable Development of Georgia) and then to Georgian Railway.

emergency response as a result of the ESIA) are among the controls monitored by the EBRD. Design and construction will also be checked by the EBRD. As part of its monitoring activities, the EBRD has recently initiated an independent audit of Georgian Railway's resettlement and compensation activities against the requirements of the EBRD Environmental Social Policy PR5.

24. EBRD's primary interests and concerns regarding the Project are:

- Broad recognition of the importance of the mission of the project. The Project has international significance. Its purpose is to make a safer, quicker route around the centre of Tbilisi. It is a noble purpose that should not be lost. It will significantly contribute to the benefit of citizens.
- Seeing the Project successfully implemented so it can deliver its benefits.
- Acknowledgement of the many robust project procedures and mechanisms that have been put in place to deal with many of the issues raised in the Complaint.
- Recognising the effort made by the Georgian Ministry of the Environment (MOE) in strengthening environmental permit requirements (e.g., protection of Tbilisi Sea and community water supply) and creating understanding of what positive results this will have for local communities.
- Identifying patterns of issues or problems and finding ways to address them at a systems level.
- Clarification of what factors led to the Complaint, given the many stakeholder engagement activities, public involvement opportunities and local grievance mechanism Georgian Railway made available for project affected people and the public.
- Ensuring effective monitoring in order to identify issues early and address them before they develop into problems.
- Ensuring the Complainant understands the design process, safeguard measures, comprehensive mitigation strategies and mechanisms built into the Project to address risk
- Setting standards for similar projects
- Preserving a positive institutional reputation and mitigating reputation risk
- Resolving issues efficiently and in a fair, balanced manner.
- Acknowledging the hard work and high level of effort invested to date and the many positive elements of the Project and at the same time recognising the need to address issues appropriately when problems arise.
- Understanding what EBRD and Georgian Railway are currently doing – the many initiatives and resources that will be put in place to mitigate impacts.
- Avoiding further delays to the Project.

25. Regarding the specific issue raised in this Complaint, the EBRD's management responded (see Annex 3 to this Report) that the EBRD requested the Client to investigate the Complainant's claim as soon as it was brought to the attention of the Bank in January 2011. The Client informed the EBRD that a court action concerning the Complainant's ownership and/or occupancy rights in relation to this land plot has been initiated. The Complainant's eligibility for compensation in accordance with the EBRD's Environmental and Social Policy either in respect of formal legal ownership rights (PR5, paragraph 31, item (ii)), or in respect of recognised occupancy rights or claims (PR5, paragraph 31, item (iii)) is dependent on the outcome of the court decision. The Bank further points out that the action of the Georgian

Railway and the EBRD's response to the Complaint and course of action on this matter will be determined by the decision of the court.⁶

III. DETERMINATION OF THE STATUS OF THE COMPLAINT

26. As a result of the Eligibility Assessment, the Assessors are satisfied that the Complaint complies with the requirement of the PCM RP 18, i.e.,

- a. it is filed by an individual or individuals as referred to in Paragraph 1 of PCM RP;
- b. it relates to a Project where: (i) the Bank has provided – and not withdrawn – a clear indication that it is interested in financing the Project; and (ii) the Bank maintains a financial interest in the Project;
- c. it describes the harm caused, or likely to be caused, by the Project; and
- d. it describes the good faith efforts the Complainant has taken to address the issues in the Complaint, including with the Bank and the Client, and a description of the result of those efforts.

27. In conformity with the requirement of the PCM RP 20 the Complaint also:

- a. contains an indication of which PCM function the Complainant expects the PCM to address, a Problem-solving Initiative and a Compliance Review;
- b. offers an indication of the outcome sought as a result of use of the PCM process;
- c. provides copies of previous communications with the EBRD.

28. In determining the Eligibility, the Eligibility Assessors also have, in line with PCM RP 21 considered:

- a. whether a Problem-solving Initiative may assist in resolving the dispute, or is likely to have a positive result; and
- b. whether a Problem-solving Initiative may duplicate, or interfere with, or may be impeded by, any other process brought by the same Complainant, regarding the same Project and/or issues pending before a court, arbitration tribunal or review body.

In relation to the point “a” the Assessors believe that varied interests of the stakeholders described in this Report are not mutually exclusive and can form the basis for a Problem-solving Initiative to address the issues of concern to the parties and have a positive result. In addition, all the stakeholders agree that the Project is important and welcome the project goal of improving railway safety within the city of Tbilisi. The obstacles that exist appear to be manageable, the time pressure is reasonable and the parties are eager to settle their problems. Finally, the parties have indicated a Problem-solving Initiative is the most compelling alternative for resolving the issues in the Complaint, compared to other procedures.

In relation to “b”, as it was established by ERISTAVI Legal Group during the additional fact-finding commissioned by the PCM, the court case regarding the 330 sq meters of the land-

⁶ The additional fact-finding by ERISTAVI Legal Group established that the court case regarding the 330 sq meters of the land plot currently occupied by the Complainant concluded in April 2009 and there are no further legal actions on the matter.

plot currently occupied by the Complainant concluded in April 2009 and there are currently no other cases brought before a court or any other arbitration or review body on the matter. Therefore, the PCM team is satisfied that the Problem-solving Initiative would not duplicate, interfere or otherwise negatively affect any process brought by the Complainant.

29. Furthermore, in line with the PCM RP 22, in determining whether the Complainant has made good faith efforts to address the issues in the Complaint per Paragraph 18(d), the Eligibility Assessors considered the information provided by the Complainant regarding his previous appeals to the Client, the Bank and the Georgian authorities and the information provided to the PCM by ERISTAVI Legal Group and are satisfied that the Complainant made a good faith effort to address the issue with the Bank, the Client and the Georgian Authorities.

30. The Eligibility Assessors are satisfied that the Complaint does not fall under any of the points listed in PCM RP 24.

31. Therefore, based on an evaluation of the eligibility criteria set out in the PCM RP 18, 20, 21, 22 and 24 and based on the analysis of the information and documents available to the PCM team, the Eligibility Assessors determined the Complaint as eligible for a Problem-solving Initiative.

32. Considering that concerns and issues raised in the Complaint are similar to those raised in Complaints 2 and 4 on the same Project, and that they include the same stakeholders, the Eligibility Assessors believe that it can be addressed through a single Problem-solving Initiative. This will allow the use of the capacities and the time of the PCM team more efficiently and avoid any duplication that would be inevitable in the case of multiple parallel Problem-solving Initiatives on the same Project.

IV. RECOMMENDATIONS

33. After checking the various exclusions of the PCM Rules of Procedure (Paragraph 24), reviewing the eligibility requirements for a Problem-solving Initiative and assessing the probability of resolving the Complaint through facilitated dialogue and negotiation, the Eligibility Assessors concluded that the Complaint is eligible for a Problem-solving Initiative. The PCM, accordingly, recommends a facilitated Problem-solving Initiative where the parties seek collaborative opportunities to address the issues raised in this Complaint for the consideration and approval of the President of the EBRD.

34. Considering that concerns and issues raised in the Complaint are similar to those raised in the Complaints 2 and 4 on the same Project, and they also include the same stakeholders, the Eligibility Assessors believe that it can be addressed through the same Problem-solving Initiative process. Thus, the Eligibility Assessors recommend one joint Problem-solving Initiative process for the Complaint 2, Complaint 3 and Complaint 4 on the Tbilisi Bypass Railway Project. That would allow for a more effective Problem-solving Initiative process, more efficient use of the PCM Team's time and capacities and will avoid any duplication that would, otherwise be inevitable.

35. The PCM team suggests that apart from the Complainant and Georgian Railway's decision makers and their technical consultants, the EBRD's ESD team also participate in the Problem-solving Initiative as a witness, technical expert and advisor with regard to the EBRD policies and standards.

36. As part of its due diligence monitoring responsibility, the EBRD has undertaken an audit of the resettlement activities and practices conducted by Georgian Railway and its

consultants to date. The EBRD is also involved in supporting the development of a number of initiatives to identify detailed impacts and design mitigation and control measures. The PCM believes that the Problem-solving Initiative can build on and strengthen some of the action points underway, particularly those that may relate to issues presented in the Complaint. In order not to duplicate efforts or create diverging or overlapping processes on the ground, the PCM will exchange information and updates with the EBRD about the progress of each process, meeting dates, etc. Furthermore, as noted above, the PCM seeks to include the participation of the EBRD as a technical resource to the Problem-solving Initiative, if the parties agree. As the PCM maintains full discretion in managing the Problem-solving Initiative in response to the Complaint, the PCM believes these efforts do not compromise its independence in any way.

IV. TERMS OF REFERENCE (TOR) FOR PROBLEM-SOLVING INITIATIVE

37. Considering the recommendation in paragraph 33, the proposed Terms of Reference is identical to the one proposed in the Eligibility Assessment Report for the Complaints 2 and 4 on the Tbilisi Railway Bypass Project. The term “Complainants” in this Terms of Reference refers to the 10 residents of Avchala district represented by Mr. David Chipashvili (Complainants of the Tbilisi Railway Bypass 2 Complaint), Mr Aleksandre Asatiani also represented by Mr. Chipashvili (Complainant of the Tbilisi Railway Bypass 3 Complaint), and Mrs Nino Saginashvili (Complainant of the Tbilisi Railway Bypass 4 Complaint). However, in relation to the current Complaint, the Problem-solving Initiative will specifically aim at establishing whether bases exist in the EBRD’s Policy and/or in Georgian legislation for any adjustment, that would allow the Client to accommodate the request of Mr Asatiani, fully or partially.

38. Despite the positive factors we have identified that lead us to recommend a Problem-solving Initiative we have no illusions about the difficulties that will accompany the convening and implementation of a collaborative process. We believe, however, that the opportunities justify a guarded optimism. With the interviews, issues, and analysis in mind, we offer a Terms of Reference which describes how an independent facilitation team composed of the PCM Officer and a PCM Expert will convene and facilitate a Problem-solving Initiative. The ToR, in accordance with PCM, RP 28, sets out the methods to be used, the time frame for the initiative, and the type of expertise required. The proposed process is drawn from a combination of stakeholders’ suggestions and the PCM team’s experience in conflict resolution and management and is offered as a process proposal to the parties for their review and input.

A. Objectives of the Assignment

39. The objectives of the assignment are to (i) design the problem-solving process with its steps and activities, (ii) manage the dialogues and meetings required in the problem-solving process; (iii) help the parties generate options and make decisions, and (iv) help the parties develop agreements that satisfy their key interests and concerns.

B. General Methods to be Used in the Problem-solving Initiative

40. In the Problem-solving Initiative, the Facilitation Team will:

- (i) Act as the convener of the talks – identify the parties and bring them to the table, recognising a Problem-solving Initiative is a voluntary process;
- (ii) Initiate the process, provide an opportunity for meaningful dialogue, and supply logistical support for the organisation of the dialogues;

- (iii) Facilitate discussions between parties involved with the objective of finding common ground and mutually acceptable solutions;
- (iv) Re-assure that ground rules are understood;
- (v) Determine areas of agreement between the parties;
- (vi) Clarify the parties' expectations regarding individual activities in the process;
- (vii) Encourage honest, good faith efforts of the parties for the implementation of the course of action;
- (viii) Assure that views of all parties are heard, respected and taken into consideration in the facilitation process;
- (ix) Use methods (individual interviews, focus group discussions, small workshops, etc.) appropriate for heterogeneous groups of stakeholders, taking into consideration the widely diverging views and possible polarisation;
- (x) Use any other method appropriate and recognised as a facilitation tool to support the parties in carrying the negotiation process forward;
- (xi) Provide timely information to and closely cooperate with the EBRD on the developments in the facilitation process;
- (xii) Prepare a settlement agreement agreed to by the Complainants and Georgian Railway; and
- (xiii) Prepare a completion report on the Problem-solving Initiative and any other documentation as needed and deemed necessary by the PCM.

C. Specific Tasks

41. The problem-solving road-map is proposed as follows:

I. Stakeholder Confirmation to Participate in a Problem-solving Initiative facilitated by the PCM Officer and the PCM Expert

The Complainants and Georgian Railways have confirmed their willingness to engage in a PCM problem-solving process with the PCM Officer and Expert serving as the convener and facilitation team. Exact roles, participants, representation and protocols governing the Problem-solving Initiative will be worked out once the Problem-solving Initiative is approved by the President.

A set of proposed Discussion Principles and Ground Rules will be discussed and agreed to by the parties. The main objective of the Ground Rules is to create common rules that apply to both parties in all further jointly developed activities. These rules will apply whether parties meet to exchange information or engage in a session to discuss or negotiate solutions. For all participants to be able to engage in a meaningful way and to enhance opportunities to build trust and respect, preparation is required. The PCM team will provide necessary support and guidance in this effort as well.

II. Stakeholder Preparation

42. The PCM team will support and work with the Complainants, the Client and the EBRD to prepare for effective and constructive engagement with one another. This support may take a variety of forms including but not limited to:

- Planning for internal (“intra-stakeholder”) decision-making and representation
- Finalising ground rules
- Clarifying roles
- Defining outcomes and agendas for information exchange and problem solving meetings
- Identifying and addressing data and information needs

- Defining goals and strategies
- Ensuring information is being shared by parties in a satisfactory, understandable and constructive manner
- Providing capacity-building or training (in communication, negotiation, consensus “interest-based problem solving”, etc.)
- Addressing logistical matters
- Preparing effective presentations
- Developing understanding of the other side

III. Information Exchange for Mutual Understanding and Public Learning

43. The PCM will convene and facilitate an information-sharing session for Complainants, their representative, Association Green Alternative, Georgian Railways, their consultants, and with the EBRD participating as a resource and technical support. The goal of this session is NOT to resolve the issues or negotiate. The purpose is to provide parties with the opportunity to:

- Exchange and share relevant data
- Engage in public learning through joint inquiry facilitated by a neutral facilitation team
- Obtain information that is credible in an open forum where questions can be asked of experts and proponents in a problem-solving format
- Gain a better understanding of technical data, the situation overall and what has happened to date
- Hear how everyone has been affected
- Clarify areas of agreement and differences
- Agree on any additional data needs
- Understand the various roles, opportunities and limitations of other stakeholders in addressing the issues

44. Some of the specific topics that could be included in an information exchange workshop include the following:

- What is the current design according to what Georgian Railways knows today, recognising that the design is not yet final
- Feasibility of alternative routes for the bypass – how was the Avchala citizens’ alternative considered? How was it studied? Why was it rejected? What other alternatives were looked at for the Avchala section?
- Rationale for deciding on the bypass route as the preferred alternative. Why is the current route through the Avchala settlement considered the best approach to reroute the railway around Tbilisi Centre?
- Buffer zone – current thinking and rationale; how developed; based upon what standards; how design and buffer compares to practices in Netherlands, Germany, France?
- Clarity regarding expected impacts, specific mitigation measures and other safeguards with focus on property values, living conditions, quality of life – what are the impacts, how can impacts be prevented; what measures will be put in place to mitigate and protect; what other safeguards are possible?
- Timing for final design, construction, project implementation

45. This session will provide the Sponsor with the opportunity to explain, clarify and address questions and concerns from Complainants and will equip Complainants with

information and knowledge they can use during the problem-solving and consensus building decision to develop informed agreements and choices.

IV. Problem-solving and Consensus Building

46. Building on the prior information exchange session, the PCM will convene and facilitate a problem-solving session between the parties to:

- (i) Review each family's situation in light of understanding the most recent design, buffer zone, impacts and mitigation elements;
- (ii) Where residents in Avchala along the railway route, which have not been re-settled or compensated demonstrate that they are directly affected by the construction or operations of the Project, the parties will engage in problem-solving to reach an agreement on either mitigation or compensation in compliance with Georgian law and EBRD Environmental and Social Policy requirements.
- (iii) Where eligible for impact mitigation, explore and review impacts in the context of the specific circumstances of each complainant, and agree upon a mitigation strategy. In addition, look more broadly at the dynamic of "public good/private bad" and explore whether there might be other creative adjustments where possible.
- (iv) Discuss the process that will be followed to communicate with the community and make further changes in the area of compensation and mitigation should the final detailed design change in any way from the current plan.
- (v) Develop contingency agreements as required. For example, spell out in writing what will be done in case of accidents, interruption of service, changes in standards, emergence of new scientific information about risks or impacts, and so forth.
- (vi) Discuss approaches for improving communication, engagement and information exchange between Georgian Railways and the families as well as other stakeholders going forward. What would meaningful engagement look like in tangible terms? What does each group expect of the other going forward in the context of communication and information requirements? Who in Georgian Railways will serve as the single point of contact for the community in the event of questions or concerns?

47. The PCM Team proposes that the preparation work take place in August 2011, followed by information exchange meetings and a follow-up problem solving session(s) in September 2011.

D. Reporting

48. The various written outputs should be submitted as follows:

- (i) The proposed problem-solving process including its steps and activities, the draft agreement and the final agreement within a time frame agreed by the parties and the PCM; and
- (ii) The Problem-solving Completion Report describing the issues raised in the Complaint; the methods used in the Initiative; and the results of the Initiative including any issues that remain outstanding. The Report will also specify the issues and points of the achieved agreement for the follow-up monitoring and reporting by the PCM Officer.

E. PCM Expert Requirements

49. The PCM Expert should have extensive experience conducting problem-solving initiatives, have at least 10 years of experience in facilitation or mediation, in particular in conducting dialogue processes across cultures using culturally appropriate structures and strategies. The PCM Expert should have experience in resolving site specific conflicts as well

as managing complex organisational and public policy issues, and should have an excellent capacity to analyse complex problems involving diverse groups of stakeholders and the ability to deal with complex facts. Knowledge of the EBRD’s project cycle, understanding of the EBRD safeguard policies and exposure to EBRD-assisted projects or other IFI assisted development projects is also helpful.

F. Time Requirement and Schedule

50. The assignment will require approximately 15 days each for the PCM Expert and PCM Officer to prepare and facilitate problem-solving meetings beginning in September 2011. The tasks, including monitoring by the PCM Officer, if relevant, and preparation of the final report will be performed intermittently between September 2011 and December 31, 2011 with the goal of completing the Problem-solving Initiative as efficiently and quickly as is feasible. The PCM team proposes that the preparation for the Problem-solving Initiative take place in August 2011 and information exchange meetings and a follow-up problem-solving session(s) in September – October 2011. Subsequent sessions would be scheduled if required, providing progress was being made and all parties as well as the PCM believed a Problem-solving Initiative would be able to achieve a positive outcome. This is a tentative timeline. Actual dates may vary.

PSI Activity/Event	Date
Preparation of Stakeholders	August 2011
Information-sharing and mutual education session	September 2011 (2-day session)
Problem-solving dialogue	September – October 2011 (3-5 days)

Annex 1 - Complaint

To:

Ms. Anoush Begoyan

PCM Officer

Project Complaint Mechanism

European Bank for Reconstruction and Development

One Exchange Square

London EC2A2JN

United Kingdom

Fax: +44 20 7338 7633

Email: pcm@ebrd.com

From:

David Chipashvili, authorised representative of Mr. Aleksandre Asatiani

Subject: Complaint on Tbilisi Railway Bypass Project (Georgia),

March 8, 2011

Dear Ms. Begoyan,

On behalf of Mr. Aleksandre Asatiani I would like to submit this complaint regarding the Tbilisi Railway Bypass Project and the refusal by the Georgian Railway Company to compensate Mr. Aleksandre Asatiani for his property (in the Avchala district).

Because of the project needs, Georgian Railway Company took 123 sq. metres from Mr. Asatiani's property (930 sq. metres) and refused to compensate to Mr. Asatiani, with the reason that he does not have formal legal rights to the property under the national law.

Beforehand, during the public hearing meetings, which the wife of Mr. Asatiani was attending (Because Mr. Asatiani is disabled he could not attend the meeting) the Georgian Railway Company promised the local population that in cases where people do not have formal legal rights to their property but have the necessary documentation they would help them to register their property and cover the registration costs, and that only after receiving legal rights the Georgian Railway company would start negotiations on compensation.

When the preparation works for the project started and no one from the Railway company contacted the family regarding the compensation, the wife of Mr. Asatiani visited several times the Georgian Railway company to clarify the issue. She was told that in order to receive compensation they should register the property and receive formal legal rights to their property. After several attempts at registration of the property Mr. Asatiani could not manage to register the property because of the Tbilisi Railway Bypass Project. The wife of Mr. Asatiani was told that the registration process for land in Avchala had been temporarily stopped because of the project and she should clarify the issue with the Georgian Railway Company. After failure to register the property the wife of Mr. Asatiani visited the office of the Georgian Railway Company and tried to meet with the responsible person in Georgian Railway Company and clarify this issue. Calls were made from the reception of the Railway office to the responsible person but the only answer Ms Asatiani received from the railway was that it was not their problem and that if Mr and Ms Asatiani want to receive compensation they should register their property.

After this failure to clarify the issue with the Georgian Railway Company Mr. Asatiani sent a letter (in Georgian) in January 17, 2011 to the EBRD (the letter was sent by me on behalf of Mr. Asatiani) and the Georgian Railway company describing the whole situation and the reasons why Mr. Asatiani has right to claim the land. In response Ms. Elena Gordeeva, operation leader of the railway project in the EBRD stated that:

"I hope you understand that the Bank cannot judge on the substance of the grievance and therefore we pass this email with the attached letter from Mr Aleksandre Asatiani to Georgian Railway for further review and follow up."

In addition she asked representative of the Georgian Railway company, Lasha Abashidze to review and follow up this letter and

"Please could you advise us of the status/progress on this matter in due time."

In response to the letter the representative of the Georgian Railway Company, Lasha Abashidze agreed to meet with the wife of Mr. Asatiani and clarify the issue. Unexpectedly at the meeting the representatives of the Railway told her that the land plot in Avchala that the railway needed (123 sq. metres of their property) was the property of Tbilisi City Hall that had already been granted to Georgian Railway Company free of charge so they would not compensate anything to them.

After this meeting, on behalf of Mr. Asatiani on February 4, 2011 I sent a second letter to the EBRD and Railway Company describing the problem and asking them to study this problem in detail in order to not violate Environmental and Social Policy of the EBRD. We did not receive any answer.

In our opinion when an EBRD operation leader receives this kind of letter showing that the problem has not been solved, at minimum she should look at this issue personally to clarify what is happening on the ground. It has now been a month since the letter was sent and there is no indication that the EBRD is taking any action to rectify the situation and avoid a violation of its Environmental and Social Policy. At the very minimum this is a case of poor administrative practice in informing us what is being done, and at worst it constitutes turning one's back to a violation of the ESP.

Despite the fact that Mr Asatiani does not have formal legal rights to the land recognized under the national law of Georgia he fully fits into category (ii) of paragraph 31 of PR 5 (Land Acquisition, involuntary

resettlement and economic displacement) of the Environmental and Social policy of the EBRD, which says that:

"Displaced persons may be classified as persons: (ii) who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws;"

Thus the Georgian Railway Company by refusing compensation to Mr. Asatiani in our opinion violates the Environmental and Social Policy of the EBRD according to paragraph 32 of PR 5 (Land Acquisition, involuntary resettlement and economic displacement): "Persons covered under paragraph 31 (i) and (ii) are provided compensation for the land they lose and other assistance in accordance with paragraphs 34 and 35".

Below I would like to show you that Mr. Asatiani has all documentation that is needed for claiming formal legal rights to the land.

Right to claim the land

On December 12, 1988 as an employee of the "Kavkaselektroqselmsheni" state-owned factory and accordingly as a member of the gardeners' union of the factory Mr. Asatiani received land plot N32 (600 sq metres) and on August 6, 1997 additionally he received 330 sq metres of land plot on which he constructed a one-floor house where currently his son is living.

As evidence that he has legal rights to the land he has:

1. A "gardener's passport"¹ (indicating the area of land he owns with official stamp of Gardeners Union); December 12, 1988;
2. Document indicating that the land (600 sq. metres + 330 sq. metres) was given to Mr. Asatiani, with an official stamp of Georgian State department of Land Management; August 6, 1997;
3. A notarized signed letter by his neighbours stating that since 1988 Mr. Asatiani really owns the one-floor house and the land plot;

¹ This is a kind of a document that is widely known in the Former Soviet Union especially for people who were working in state owned factories. This document was granted to the employees of the state factories and organizations giving entitlement to land plots or other benefits. After the Soviet Union people started to privatize this property based on such documents. Since the Rose Revolution the property registration process has changed and in order to obtain final legal rights on property (land plots, houses etc.) it is necessary to have either a privatization document received after the Soviet Union ended or these documents received during the Soviet Union (not everyone privatised their real estate after the Soviet Union because of the poor financial conditions of the population of Georgia more than 50% of population were and still are under the poverty line). Today more than half of the real estate of the population is still not registered again because of the poor financial situation in Georgia.

4. Mr. Asatiani as a member of the Gardeners' Union of the factory is also in the list of the members of the Union (Number 33 highlighted);
5. Inquiry on design of the house to construct in the Land plot 32 with signature of chairman of Gardeners Union together with official stamp;
6. He also has paid bills of electricity, natural gas and water for this address.

Desired outcome

With this complaint, Mr. Asatiani expects the EBRD Project Compliance Mechanism experts to perform a compliance review and a problem solving initiative of the Tbilisi Railway Bypass project regarding the abovementioned lack of compensation. The final outcome should be compensation for his full property as it will be impossible to live there after the construction takes place.

Annex 1: (Georgian)

1. Gardener's passport;
2. Document indicating that the land (600 sq. metres + 330 sq. metres) was given to Mr. Asatiani;
3. A notarized signed letter by his neighbours;
4. List of the members of Gardener's Union;
5. Inquiry on design of the house in the land plot 32;
6. Bills on electricity, water and natural gas;

Annex 2:

1. The first letter to EBRD and representative of the EBRD (Georgian), January 17, 2011;
2. The second letter to EBRD (Railway company is included), February 4, 2011.

Annex 3:

Proof of Authorization of David Chipashvili from Mr. Aleksandre Asatiani

Name and signature of Authorised Representative:

David Chipashvili

E-mail: datochipashvili@caucasus.net , dchipashvili@greenalt.org

Tel: (+995 32) 292773; Fax: (+995 32) 223874

Mob. Phone: (+995 58) 277283

Name and signature of Mr. Aleksandre Asatiani:

ალექსანდრე ასათიანი
 მისამართი № 010 200 102 11
 ბათუმის - ნავთობის რაზმის ხუროთმოძღვრება
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Annex 2- Bank Response

Bank Response to EBRD Project Complaint Mechanism

<u>EBRD Project Complaint Mechanism</u>	
Project	Tbilisi Railway Bypass Project (OpID: 40173)
Project Team	Operation Leader: Elena Gordeeva Operation Team Members: Nino Marshania OGC: Stephanie Wormser ESD: Frederic Giovannetti (currently a consultant to the Bank), Mikko Venermo, Dariusz Prasek, Alistair Clark
Date of issue to ExCom	28 April 2011
Date of approval by ExCom	5 May 2011
To: PCM Officer	Anoush Begoyan
Date of Issue to PCM Officer	6 May 2011

Thank you for your email dated 11 March 2011, regarding the request for a compliance review and problem-solving initiative of the Tbilisi Railway Bypass Project (the “Project”) under EBRD Project Complaint Mechanism (PCM) by the Association Green Alternative. The three complaints introduced by the Association Green Alternative were officially registered on 14 March 2011. Reference is also made to your email dated 17 March 2011, regarding another complaint in respect of the Tbilisi Railway Bypass Project was officially registered on 24 March 2011. This document is ‘the Bank Response’ to the complaints as outlined in PCM: Rules of Procedure (Clause 15).

There are a number of issues raised in the complaints. ‘The Bank’s Response’ is structured to address each complaint separately.

Complaint: Tbilisi Railways Bypass 1. Request number: 2011/01. By the Association Green Alternative

As stated by the Complainant, issues raised in the complaint have been discussed between the Complainant, Georgian Railway and EBRD on several occasions starting with the ESIA public consultation exercise from July to December 2009. EBRD has already taken consideration of the Complainant’s views as well as of other views expressed during public consultation in (i) the guidance to the ESIA consultant, and (ii) setting conditions to EBRD financing for the Project. It is worth noting that the Georgian authorities have also taken consideration of these concerns in the

environmental permit issued to Georgian Railway. EBRD is monitoring the implementation of the Project by Georgian Railway in compliance with these requirements and conditions, including the regulatory obligations set by the Georgian regulating agencies.

The ESIA was developed and published in 2009 at a stage in the Project development where a concept design was available at a level of detail sufficient to assess key environmental and social impacts. However, for an infrastructure project of this magnitude, it is a normal process that technical design proceeds in successive refinements from concept to detailed design. Amongst other outcomes, the ESIA identified several key impacts that had not sufficiently been taken into account in the initial concept design. As a result of the ESIA both the Georgian regulator and EBRD have imposed onto Georgian Railway the development of more comprehensive and detailed mitigation measures to address, amongst others, noise, water protection, community safety and emergency response. Together with the construction contractor and a specialised environmental consultant hired late 2010 specifically for that purpose, Georgian Railway is now in the process of developing detailed engineering measures ensuring that adequate provisions are in place to mitigate these impacts. The implementation of this obligation is monitored by EBRD and both the design and the construction of these mitigations will be checked by EBRD. Georgian Railway is required to keep local affected communities informed as the project progresses.

For an infrastructure project of this magnitude, the technical development takes several years. A number of detailed environmental action plans, such as waste management or quarrying, depend on the actual construction work plan that can only be finalised by the construction contractor once the contractor has been selected. Not uncommonly, this happens well after the ESIA is developed. The construction contractor is obligated to develop such action plans prior to commencing the work. EBRD is monitoring this process. Therefore, some detailed mitigation plans are still in progress.

The resettlement and compensation process carried out by Georgian Railway has recently (March 2011) been subject to an independent audit commissioned by EBRD as part of routine monitoring requirements. The results of this audit are currently being reviewed by EBRD and Georgian Railway. The substance of the Green Alternative complaint was brought to the auditors' attention by EBRD prior to their site visit. The auditors amongst others assessed the adequacy of public consultation and information disclosure. If the independent audit demonstrates that corrective measures are needed, these will be discussed between EBRD and Georgian Railway in order to define an implementation plan. EBRD will expect Georgian Railway to make such plan public.

If the non resettled residents in Avchala or elsewhere along the railway route demonstrate that they are directly affected by the construction or operations of the Project, then Georgian Railway has to reach an agreement with them on either mitigation or compensation in compliance with Georgian law and EBRD Environmental and Social Policy requirements. The implementation of these requirements by Georgian Railway will be monitored by EBRD through the review of

monitoring reports submitted by Georgian Railway to EBRD and periodic monitoring visits by EBRD staff and representatives or independent monitoring consultants.

Funding from the EU Neighbourhood Investment Facility (NIF) has been obtained for a detailed investigation of the contamination of the land in Tbilisi centre currently used by the railroad. The consultant for this assignment is currently being appointed and the investigation will be conducted in accordance with the Terms of Reference agreed with EBRD. The cost of physical clean-up activities (which activities will only be undertaken once the new route becomes operational and when the redevelopment commences) will be estimated as a result of the aforementioned detailed investigation and an ongoing detailed master planning exercise which is also funded by NIF. Georgian Railway undertook to finance the clean-up activities unless additional grant funding can be obtained.

Complaint: Tbilisi Railways Bypass 2. Request number: 2011/02. Joint by ten PAPs, via the Association Green Alternative

As stated by the complainants, issues raised in the complaint have been discussed between the complainants, Georgian Railway and EBRD on several occasions starting with the ESIA public consultation exercise from July to December 2009. Georgian Railway and EBRD have already taken consideration of the views expressed during public consultation in (i) EBRD guidance to the ESIA consultant and (ii) setting conditions to EBRD financing for the Project.

The ESIA was developed and published in 2009 at a stage in the Project development where a concept design was available at a level of detail sufficient to assess key environmental and social impacts. However, for an infrastructure project of this magnitude, it is a normal process that technical design proceeds in successive refinements from concept to detailed design. Amongst other outcomes, the ESIA has identified several key impacts that had not sufficiently been taken into account in the initial concept design. As a result of the ESIA, both the Georgian regulator and EBRD have imposed onto Georgian Railway the development of more comprehensive and detailed mitigations addressing, amongst others, noise, water protection, community safety and emergency response. Together with the construction contractor and a specialised environmental consultant hired late 2010 specifically for that purpose, Georgian Railway is now in the process of developing detailed engineering measures ensuring that adequate provisions are in place to mitigate these impacts. The implementation of this obligation is monitored by EBRD.

If the non resettled residents in Avchala or elsewhere along the railway route demonstrate that they are directly affected by the construction or operations of the Project, then Georgian Railway has to reach an agreement with them on either mitigation or compensation in compliance with Georgian law and EBRD Environmental and Social Policy requirements. The implementation of these requirements by Georgian Railway will be monitored by EBRD through the review of monitoring reports submitted by Georgian Railways to EBRD and periodic

monitoring visits by EBRD staff and representatives or independent monitoring consultants.

Complaint: Tbilisi Railways Bypass 3. Request number: 2011/03. By Alexandre Asatiani, a PAP, via the Association Green Alternative

This issue was brought directly by the Complainant to the attention of EBRD in January 2011. EBRD requested the Borrower to investigate the Complainant's claims as soon as it received initial communications from the complainant.

Georgian Railway has made a representation to EBRD that court action in respect of the Complainant's ownership and/or occupancy rights in relation to this land plot has been taken. The Complainant's eligibility for compensation in accordance with EBRD's Environmental and Social Policy either in respect of formal legal ownership rights (PR5, paragraph 31, item (ii)), or in respect of recognised occupancy rights or claims (PR5, paragraph 31, item (iii)) is dependent on the outcome of the court decision. Likewise, Georgian Railway and EBRD's response to the complaint and course of action depend on the court decision.

Complaint: Tbilisi Railways Bypass 4. Request number: 2011/04. By Nino Saginashvili, a PAP

The Complainant contacted EBRD by e-mail on 28 February 2011 and lodged the PCM complaint on 16 March 2011, before it had been possible to investigate her initial claim in detail.

If the non resettled residents along the railway route demonstrate that they are directly affected by the construction or operations of the Project, then Georgian Railway has to reach an agreement with them on either mitigation or compensation in compliance with Georgian law and EBRD Environmental and Social Policy requirements. The implementation of these requirements by Georgian Railway will be monitored by EBRD through the review of monitoring reports submitted by Georgian Railway to the Bank and periodic monitoring visits by EBRD staff and representatives or independent monitoring consultants.

Annex 3 – Client Response

Dear Ms. Begoyan,

Georgian Railway LLC (the GR) has received Complaint of Mr. Aleksandre Asatiani on Tbilisi Railway Bypass Project lodged through the Project Complaint Mechanism (the PCM) of the European Bank for Reconstruction and Development (the EBRD).

As a response to the complaint, we would like to provide information regarding this land plot owned by Alexandre Asatiani.

First of all it needs to be mentioned that the GR uses its best efforts to ensure compliance with EBRD Environmental and Social Policy 2008 (the Policy), by assisting all land plot owners in registering their property in the LEPL National Agency of Public Registry (the NAPR). In the cases where people have no formal legal rights to their property GR assists them in the process of legalization of the property through the respective committee established in the Tbilisi Municipality and even undertake to cover all expenses associated with legalization. As of today 35 land parcels have been legalized and GR has made payments of all legalization fees to Tbilisi Municipality (72, 873.63 GEL).

Allegations raised by the complainant are far beyond the truth, as the GR has no power and authority to instruct the NAPR regarding suspension/refusal of registration of other person's property. For the purposes of providing evidence of that the GR was not involved in this process we have checked information available on the official web site of the NAPR and found out that:

- On April 16, 2008 Mr. Alexandre Asatiani has applied to the NAPR requesting registration of his property rights on the land plot located in Gldani, Avchala. On September 19, 2009 the NAPR terminated the registration procedures and explained in writing to Mr. Asatiani that criminal proceedings on the criminal law case #8207932 is ongoing in the Prosecutors office of the district of Shida Kartli and Mtskheta-Mtianeti regarding the forgery of the documents evidencing property rights on the property. In addition, the NAPR has provided reference to the Georgian legislation - article 22 of the Georgian Law on Public Registry and the Order #800 of the Ministry of Justice of Georgia dated December 13, 2006 – according to which the NAPR is obliged to terminate the registration procedures.
- On September 22, 2009, December 21, 2009, November 15, 2010 Mr. Alexandre Asatiani reapplied three times to the NAPR with the same request and on November 09, 2009, December 25, 2009 and January 4, 2011 respectively received the same response from the NAPR referring to the criminal case #8207932 and NAPR's obligation under the Georgian legislation on termination the registration procedures.

Considering the above mentioned one can easily find out that GR was not involved and could not assist the property owner in the process of registration of the property. That is why the property needed for the implementation of the Tbilisi Railway Bypass Project, (123sq.m from the 930sq.m. land plot currently occupied by the Asatiani family) has been registered as the State property and then transferred to the capital of the GR.